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Raised Bill No. 427 – *An Act Concerning Children in the Juvenile Justice System and Guardianship Appointment*
Judiciary Public Hearing – March 14, 2016

The Connecticut Criminal Defense Lawyers Associations is a not-for-profit organization of more than three hundred lawyers who are dedicated to defending persons accused of criminal offenses. Founded in 1988, CCDLA is the only statewide criminal defense lawyers' organization in Connecticut. An affiliate of the National Association of Criminal Defense Lawyers, CCDLA works to improve the criminal justice system by insuring that the individual rights guaranteed by the Connecticut and United States constitutions are applied fairly and equally and that those rights are not diminished.

CCDLA supports the proposed legislation but has some concerns regarding certain portions. Section 1 is a significant improvement over existing law in that it provides credit for time spent in detention for children in delinquency proceedings.

CCDLA would like to highlight some concerns regarding Section 6 of the proposed legislation; this section provides for the repeal and replacement of Connecticut General Statutes § 46b-146. Section (a) (2) addresses delinquency convictions for non-serious juvenile offenders (non-SJOs) or a family with service needs petition (FWSN) upon discharge from custody. The language used is confusing and problematic. First the proposed bill indicates that the records will be ordered erased on the second day of January of each year, or on another date specified by the court, but then additionally requires certain criteria (same criteria spelled out in the current law) be met; specifically, that the child have attained the age of 18.

This new section will require that juvenile courts perform a 'look back' for each child that was adjudicated a delinquent or subject to a FSWN petition and discharged from custody upon that child turning 18. This will create a tremendous administrative burden on a juvenile court. Additionally, it should be noted that the differing language in section (a)(1) and (a)(2) may have an unintended consequence. Section (a)(1) has the following language: "such child, child's parent or guardian, may file a petition". Note that section (a)(2) does not have such a requirement. Therefore this burden will entirely remain on the court. The failure to erase this information can potentially result in harm to an individual. However, if the court fails to act, this bill provides no mechanism for a non-SJO to petition the court for erasure (unless doing it early under a(3)(c).

Additionally, this revision does not fit with the Governor's second chance initiative as it requires certain criteria be met before a court will order erasure. A possible alternative is to have a court order erasure (on a date specific in the future) at the time of discharge. This alternative policy would ensure the erasure for non-SJO offenses, as opposed to this multi-point checklist that tells a court when to order erasure. Put another way,

the mechanism created here requires a court to order erasure only after certain criteria is met placing the burden on the person to show the court certain information, but not allowing the person to actually petition the court, and instead expecting a court to have all of the information available to it without a petitioner.

CCDLA respectfully suggests the legislature strongly consider mandatory erasure language for section (a)(2) subject only to a subsequent juvenile court order, when there is a subsequent juvenile proceeding or subsequent or adult criminal case. Such language could empower a court to suspend the mandatory order of erasure. As stated above, the fact that a party is not required to petition for erasure is a very positive thing, but ultimately without consideration of the administrative burden on the court, and a remedy of the affected person, leaving an affected person with no specified mechanism to seek erasure.

The language of section (a)(3)(b) here is left too vague as it does not specify a time frame or who shall issue the order of erasure. Alternatively the bill should include language comparable to "immediately order by the court upon dismissal". This would ensure that action is taken and done so in a timely manner.

The language of section (a)(3)(c) this allows for earlier erasure upon petition to the court and after a hearing. CCDLA would like to see language requiring a hearing be dispensed with and instead a court shall be allowed to order erasure if it finds good cause only.

The Connecticut Criminal Defense Lawyers Association asks that the foregoing recommendations regarding this proposed legislation be considered and changes be made where appropriate.